

11 KAR 4:030. Student appeals process.

RELATES TO: KRS 164.748(14)

STATUTORY AUTHORITY: KRS 13B.070(3), 13B.170, 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend postsecondary institutions. This administrative regulation sets forth the procedures by which students seeking financial assistance or individuals indebted to the authority for repayment of student financial assistance may request a review of decisions made by the authority's employees which adversely affect their rights, obligations or benefits or their eligibility to participate in authority administered programs. This amendment is necessary to clarify hearing procedures and the applicability of this administrative regulation to certain disputes that may arise.

Section 1. Definitions. (1) "Adverse action" shall mean any of the following actions or decisions by an employee or agent of the authority that adversely affects the rights, obligations, or benefits of a petitioner:

- (a) Denial of an award of student financial assistance;
- (b) Reduction or revocation of an award of student financial assistance;
- (c) Determination of the existence and amount of a repayment obligation or eligibility for cancellation or deferment of a repayment obligation authorized by statute or administrative regulation on a debt to the authority;
- (d) Determination of default or acceleration of repayment of a debt to the authority;
- (e) Accuracy of credit information;
- (f) Establishment of reasonable and affordable payment terms for rehabilitation of a defaulted insured student loan or reinstatement of eligibility for additional student assistance, including consolidation of defaulted insured student loans, after payment of a claim due to default on an insured student loan;
- (g) Denial of rehabilitation of a defaulted insured student loan or reinstatement of eligibility for additional student assistance, including consolidation of defaulted insured student loans, after payment of an insurance claim by the authority due to default on an insured student loan or nonpayment of any debt to the authority.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) "Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of a promissory note under circumstances where the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay.

(4) "Petitioner" means an applicant for or recipient of student financial assistance administered by the authority or a person, including an endorser, indebted to the authority for financial assistance who has been affected by an adverse action or decision by the authority.

(5) The definition of "endorser" is governed by KRS 164.740(7).

(6) The definition of "insured student loan" is governed by KRS 164.740(11).

(7) "Record" means all of the documentation filed by the petitioner and all of the information considered by the delegated employee of the authority in ruling on a request for review pursuant to Section 4(1) of this administrative regulation.

(8) "Request for clarification" is the first communication, written or oral, from a petitioner for explanation of an adverse action by the authority.

(9) "Request for review" is a petitioner's communication challenging the authority's basis for the adverse action.

Section 2. Scope of Administrative Regulation. (1) The procedures prescribed in this administra-

tive regulation shall not apply to:

- (a) The setoff of an individual's tax refund or any payment by the U.S. Treasury or by the Commonwealth for payment of a debt owed to the authority in accordance with 11 KAR 4:050, except to the extent specified in that administrative regulation;
- (b) The issuance of an administrative order of wage garnishment by the authority for recovery of a defaulted insured student loan pursuant to 11 KAR 3:100;
- (c) Any matter pending adjudication by a court or that has previously been adjudicated by a court, except that a petitioner shall exhaust all administrative remedies prior to commencement of an action in court;
- (d) The dischargeability of a debt to the authority in bankruptcy;
- (e) Denial of an award of financial assistance due to lack of funds authorized for that purpose;
- (f) Denial of a grant due to the petitioner's failure to notify the authority of a change of educational institution by a deadline established in administrative regulations.

Section 3. Request for Clarification. A petitioner may, upon any adverse action by the authority, request from the authority, at any time following notification of the adverse action, a concise statement of the basis for the action including citation of statutory or regulatory authority for the adverse action. The authority's delegated employee, within twenty (20) working days of receipt of the request for clarification, shall respond in writing to a written request for clarification and notify the petitioner of his right to request a review of the adverse action. If the petitioner makes an oral inquiry at any time, the authority shall not be required to respond in writing. The authority shall not be required to suspend any activities it has undertaken or, in the ordinary course of the administration of its programs, may subsequently undertake related to the adverse action. The authority shall take reasonable steps to informally resolve any discrepancy in the petitioner's record identified by the oral or written request for clarification. If the delegated employee responding to the request for clarification believes that the information available to the authority indicates a discrepancy and warrants steps to resolve the dispute, activities related to the adverse action may be suspended at the discretion of the delegated employee.

Section 4. Request for Review. (1) Initial administrative review.

(a) If the applicability of statutes or administrative regulations to the adverse action or the factual accuracy of information contained in the authority's notification of adverse action or the response to a request for clarification pursuant to Section 3 of this administrative regulation, he may request in writing a review of the adverse action and any response to a request for clarification. This request for an initial administrative review of the adverse action may be submitted at any time, but shall not result in a suspension of any action by the authority pertaining to the petitioner during the review, except that the authority shall not report information to a credit bureau or assess collection costs during the review on an insured student loan if the petitioner submits a written request for an initial administrative review with relevant documentation attached within sixty (60) days of the date that the authority sends a notice of default by the petitioner on an insured student loan upon payment by the authority of an insurance claim to the holder of the insured student loan. If the delegated employee conducting the initial administrative review believes that the information available to the authority indicates a discrepancy and warrants steps to resolve the dispute, activities related to the adverse action may be suspended at the discretion of the delegated employee.

(b) The request for initial administrative review of the adverse action shall specify the factual basis on which the adverse action is disputed and any legal or equitable defense the petitioner may have against recovery of a debt to the authority. The petitioner shall submit with the request for review all documentation the petitioner believes supports his position and shall submit any additional documentation that the authority may deem relevant and require. The petitioner may supplement the writ-

ten request for review and the documentation within ten (10) working days of the date the request is received by the authority. The authority shall not be required to consider a request for review that is not in writing or is not supplemented by supporting documentation that has been requested in writing by the authority.

(c) The authority's delegated employee conducting the review shall consider any documentation submitted by the petitioner, any documentation of the authority, and information from any other source that the delegated employee may deem relevant. The documentation considered shall be made available to the petitioner upon written request. Upon request of the petitioner at the time of submitting the written request for review and clarification of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence, the petitioner or any other witness called by the petitioner or the authority with relevant factual information may appear in person or by telephone to present additional facts, if the delegated employee conducting the review determines, in his discretion, that the issues to be resolved require a determination of credibility or veracity. The petitioner's request to appear in person or by telephone shall include identification of any other individuals that the petitioner wishes to have testify, identification of the specific issues regarding which the individuals are prepared to provide additional information, and an explanation of the reasons why each individual's testimony is necessary to resolve the issues. The documentation considered and the delegated employee's summary of any in-person or telephonic testimony shall constitute the entire record of the administrative review, and shall be deemed conclusive as to all issues in dispute.

(d) The delegated employee conducting the review shall notify the petitioner in writing of the results of the administrative review, stating the essential facts and the applicable laws and administrative regulations upon which the conclusion is based. The notice shall also indicate that the record of the administrative review and the written conclusions by the delegated employee shall be provided to the executive director or his designee for a redetermination upon request of the petitioner.

(2) Review by executive director.

(a) A review by the executive director or his designee of the results of the initial administrative review shall consider the record of the initial administrative review; applicable laws, administrative regulations, and any federal directives; and any consultation with authority personnel that he may deem necessary. A request for review by the executive director shall not result in a suspension of any action by the authority pertaining to the petitioner during the review, except that if the executive director or his designee conducting the review believes that the information available to the authority warrants steps to resolve the dispute, activities related to the adverse action may be suspended at the discretion of the executive director or his designee. If the findings warrant, the executive director or his designee may uphold the adverse action or result of the request for review or may reverse or modify the adverse action or the result of the request for review in whole or in part. The executive director or his designee may, at any time, negotiate a mutually agreeable resolution of the dispute if in his discretion, the circumstances warrant a settlement.

(b) Time frame. The review by the executive director shall be requested in writing within thirty (30) days of the date of the notice described in subsection (1)(d) of this section.

(c) Notice. The written decision of the executive director or his designee shall be sent to the petitioner, with a notice that shall inform the petitioner of the right to request a hearing pursuant to KRS Chapter 13B within thirty (30) days on all issues raised by the petitioner in the request for review. Service of the notice of the decision shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, if sent by U.S. first class mail, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice may otherwise be evidenced by affidavit of an individual executing personal service or a postal delivery receipt.

Section 5. Request for Hearing. (1)(a) If an adverse action is upheld by the executive director or

his designee, the petitioner may request a hearing pursuant to KRS Chapter 13B. A request for a hearing shall not result in a suspension of any action by the authority pertaining to the petitioner.

(b) The request for a hearing shall be served on the authority within thirty (30) days after receipt of notice of the executive director's decision.

(2) Upon receipt of a timely request for a hearing, the authority shall, in accordance with the procedures prescribed in KRS Chapter 13B, arrange for a hearing before a hearing officer appointed by the authority. The hearing officer, following submission of the report described in subsection (3)(b) of this section, shall establish a schedule for any discovery, prehearing conferences, and the time and place of the hearing. The place of the hearing shall be in Franklin County, unless another location is agreed on by the parties.

(3)(a) Not more than fifteen (15) days following service upon the authority of the request for a hearing, the parties shall confer and jointly stipulate the issues to be resolved by the hearing officer, discuss the possibility of informal resolution of the dispute, develop a proposed discovery plan, exchange or arrange for the exchange of a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence, and agree to possible dates for a prehearing conference and the hearing.

(b) The authority shall report to the hearing officer the results of the discussions between the parties described in paragraph (a) of this subsection.

(c) Upon the request of either party, at any time, the hearing officer may issue a subpoena for the production of documents or the attendance of witnesses. Either party may depose witnesses, upon reasonable notice to the witness and the opposing party, without leave of the hearing officer, except that attendance of witnesses that are not parties to the hearing may be compelled by subpoena issued by the hearing officer, either party may, without leave of the hearing officer, submit interrogatories and request for admissions to the opposing party. The party receiving the interrogatories or request for admissions shall respond within twenty (20) days, or upon such shorter or longer time as the hearing officer may allow. Each matter of which an admission is requested shall be deemed admitted unless, within twenty (20) days after service of the request, or upon such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(4) At the hearing, the record of the administrative review, described in Section 4(1) of this administrative regulation, and the decision of the executive director or his designee, described in Section 4(2) of this administrative regulation, shall be submitted to the hearing officer and the taking of proof shall commence first with the presentation of evidence by the petitioner and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

Section 6. Final Order of Board. The board shall review the hearing officer's recommended order and the record of the hearing at the next regularly scheduled meeting of the board, unless a special meeting is necessary for this purpose to render a final order within the time required by KRS 13B.120. The board shall adopt the hearing officer's recommended order unless it is clearly unsupported by the evidence presented at the hearing and the applicable law. The board shall only consider the record adduced at the hearing, including all documents, briefs, and transcripts of the hearing, as well as the evidence presented at the hearing, but may, at the discretion of the board's chairman, permit counsel for the petitioner and the authority, or the petitioner if not represented by counsel, to submit briefs and make oral arguments pertaining to the issues addressed in the hearing officer's recommended order. (5 Ky.R. 279; eff. 11-1-1978; Am. 6 Ky.R. 680; eff. 8-6-1980; 21 Ky.R. 445; eff. 10-6-1994; 23 Ky.R. 3066; eff. 4-14-1997; TAm eff. 4-27-2016.)